



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

Seventh Division

MINUTES of the proceedings held on October 11, 2018.

Present:

<i>Justice MA. THERESA DOLORES C. GOMEZ-ESTOESTA--</i>	<i>Chairperson</i>
<i>Justice ZALDY V. TRESPESES -----</i>	<i>Member</i>
<i>Justice GEORGINA D. HIDALGO-----</i>	<i>Member</i>

The following resolution was adopted:

Crim. Case No. SB-18-CRM-0293 – People of the Philippines vs. Apolinario Tino Camsol, et al.

This resolves the following:

1. The accused's "Motion for Reconsideration" dated September 21, 2018;¹ and
2. The prosecution's "Comment/Opposition" dated September 28, 2018.²

HIDALGO, J.:

Before this Court for resolution are the accused's Motion for Reconsideration of the Court's Resolution dated September 17, 2018,³ denying the motion to dismiss filed by the accused based on inordinate delay; and the prosecution's Comment/Opposition to the Motion.

In gist, the accused in their Motion averred that: *first*, the prosecution failed to state the facts of complexity that led to the delay in the filing of the Information with the Sandiganbayan, hence, the Ombudsman's delay is not justifiable; and *second*, this Court, not the Ombudsman, is the proper forum to entertain the issue of whether the accused belatedly raised the issue of inordinate delay and, thus, the motion to dismiss was timely filed as the accused followed the proper procedure, and that the delay in invoking their right to speedy disposition of cases did not constitute a waiver of such right

¹ Record, pp. 379-383.

² Id. at 392-402.

³ Id. at 364-372.

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and must be attributed to the Ombudsman because of its duty under our laws to resolve the matter before it within a reasonable period.⁴

The prosecution countered in its Comment/Opposition that: *first*, the instant case was an off-shoot of widespread scandal that plagued the entire country; it was not only the accused but also other respondents that underwent preliminary investigation, and not only the Municipality of Buguias, Benguet that was the subject of the Fertilizer Fund Scam. The Special Panel on Fertilizer Fund Scam was tasked to investigate and resolve all the complaints nationwide. The accused failed to appreciate the complexity of the issues involved; the case did not involve one transaction on singular point in time but a series of schemes that occurred in months and with a number of documents representing each act; and *second*, it is the first time that accused raised the issue of inordinate delay when their arraignment was already scheduled, when they could already have asserted their right to speedy disposition of cases even during the preliminary investigation stage.⁵

First, to be sure, the grounds invoked by the accused-movants in their present motion for reconsideration are, in effect, mere reiterations of the arguments previously raised in their motion to dismiss. These arguments were squarely passed upon by the Court in its Resolution sought to be reconsidered, to wit:

(2) *The reason for the delay.* x x x

x x x x

We rule that that the Ombudsman's delay in resolving the case is justifiable. Although this case is just one of the many *Fertilizer Fund Scam* cases, the Ombudsman cannot be faulted for the delay since the case is "not run-of-the-mill variety" and is itself complex.

The Supreme Court, in the *Cagang* case, stated that "vexatious, capricious, and oppressive delays," "unjustified postponements of the trial," or "when without cause or justifiable motive a long period of time is allowed to elapse without the party having his or her case tried" are instances that may be considered as violations of the right to speedy disposition of cases. The Ombudsman in this case clearly did not commit these fatal lapses. **Neither did the accused prove that the Ombudsman committed such infractions.** Hence, the prosecution appeared to have regularly followed established procedure in prosecuting

⁴ Id. at 380-381.

⁵ Id. at 393-394.

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the case and justified that delay was incurred because of the complexity of the cases involved and the vast amount of evidence that must be presented.⁶ (emphasis added)

We agree with the prosecution that the accused did not provide any proof of the supposed violation of their constitutional right so that the prosecution can be faulted for such delay in the disposition of their cases. The burden of proof that delay existed even before the filing of the Information lies on the shoulder of the defense. As ruled by the Supreme Court:

The complexity of the issues presented by the case must be considered in determining whether the period necessary for its resolution is reasonable. In *Mendoza-Ong v. Sandiganbayan* this Court found that “the long delay in resolving the preliminary investigation could not be justified on the basis of the records.” In *Binay v. Sandiganbayan*, this Court considered “the complexity of the cases (not run-of-the-mill variety) and the conduct of the parties’ lawyers” to determine whether the delay is justifiable. When the case is simple and the evidence is straightforward, it is possible that delay may occur even within the given periods. Defense, however, still has the burden to prove that the case could have been resolved even before the lapse of the period before the delay could be considered inordinate.⁷

Second, the accused would like this Court to believe that the issue of whether the accused timely invoked their right to speedy disposition of cases can only be raised with this Court. This position is specious at best.

This Court wrote in its assailed Resolution:

Despite the pendency of this case since 2011, the accused only invoked their right to speedy disposition of cases after the filing of the Information on April 20, 2018. Admittedly, while there was delay, the accused have not shown that they asserted their rights during the preliminary investigation, opting instead to wait until the Information was filed against them with this Court.⁸

We are one with the prosecution in its position that even during the preliminary investigation, accused should have already asserted their right to speedy disposition of cases and not wait until the Information was filed with

⁶ Id. at 368-369, citing *Cagang vs. Sandiganbayan*, G.R. Nos. 206438 & 206458 and 210141-42, July 31, 2018.

⁷ *Cagang vs. Sandiganbayan*, id.

⁸ Record, pp. 370-371.

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the Sandiganbayan. The defense must also prove that it exerted meaningful efforts to protect accused's constitutional rights,⁹ without which their failure to do so would be tantamount to waiver and acquiescence to the delay, resulting in laches.¹⁰

In sum, the accused-movants have failed to raise any new or substantial matter that would warrant a reconsideration of the Court's Resolution dated September 17, 2018. Their Motion is a mere rehash of its previous arguments, and there is no cogent reason to modify, much less reverse, our assailed Resolution.

WHEREFORE, the accused's Motion for Reconsideration dated September 21, 2018 is **DENIED**.

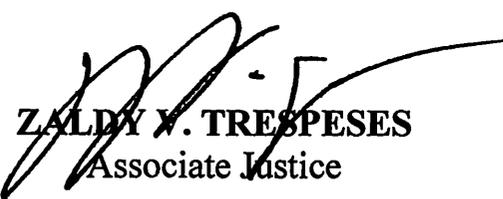
Set the arraignment and pre-trial on November 23, 2018 at 8:30 in the morning.

SO ORDERED.


GEORGINA D. HIDALGO
Associate Justice

WE CONCUR:


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice
Chairperson


ZALDY V. TRESPESSES
Associate Justice

⁹ *Cagang vs. Sandiganbayan*, supra note 6.

¹⁰ *Dela Peña vs. Sandiganbayan*, 412 Phil. 921 (2001); *Alvizo vs. Sandiganbayan*, 292-A Phil. 144 (1993).